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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

J.P., BY AND THROUGH HIS
GUARDIAN AD LITEM,
SHANNON VILLANUEVA,

PLAINTIFFS,

VS.

COUNTY OF ALAMEDA, DIANE
DAVIS MAAS, SUE MAY,
TRIAD FAMILY SERVICES,
MARIA REFUGIO MOORE, AND
DOES 1-30, INCLUSIVE,

DEFENDANTS.

NO. 17-CV-05679 YGR

OAKLAND, CALIFORNIA

TUESDAY

DECEMBER 4, 2018

2:00 O'CLOCK P.M.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF J.P.:

DARREN JAY KESSLER, ESQUIRE
3060 EL CERRITO PLAZA, #371
EL CERRITO, CALIFORNIA 94530
AND

SCOTT LAW FIRM

BY: LIZABETH N. DE VRIES
1388 SUTTER STREET, SUITE 715
SAN FRANCISCO, CALIFORNIA 94109

FURTHER APPEARANCES ON NEXT PAGE.

REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR

PRO TEM REPORTER - US DISTRICT COURT

1 FURTHER APPEARANCES:

2 FOR DEFENDANT COUNTY OF ALAMEDA, DIANE DAVIS MAAS AND SUE MAY:

3 HAAPALA, THOMPSON & ABERN, LLP

4 1939 HARRISON STREET, SUITE 800

5 OAKLAND, CALIFORNIA 94612

6 BY: REBECCA S. WIDEN, ATTORNEY AT LAW

7
8 FOR DEFENDANT MARIA REFUGIO MOORE:

9 GAVIN CUNNINGHAM & HUNTER

10 BY: ELIZABETH GONG LANDESS

11 1530 THE ALAMEDA, SUITE 210

12 SAN JOSE, CALIFORNIA 95126

13
14 FOR DEFENDANT TRIAD FAMILY SERVICES:

15 MATHENY SEARS LINKERT JAMIE, LLP

16 BY: RONALD E. ENABNIT, ESQUIRE

17 3638 AMERICAN RIVER DRIVE

18 SACRAMENTO, CALIFORNIA 95864

1 **DECEMBER 4, 2018**

2:00 O'CLOCK P.M.

2
3 **P R O C E E D I N G S**

4 **THE CLERK:** COUNSEL, THE NEXT CASE J.P. VERSUS
5 COUNTY OF ALAMEDA. COME UP TO THE TABLES, AT LEAST, AND THEN
6 I'LL CALL THE CASE.

7 I SEE ONE MORE COUNSEL? WHEN YOU COME UP BRING
8 YOUR CARD.

9 THANK YOU.

10 CALLING CIVIL ACTION 17-5679, J.P. VERSUS COUNTY OF
11 ALAMEDA, ET AL.

12 COUNSEL, PLEASE COME FORWARD, AND STATE YOUR
13 APPEARANCES.

14 **MS. DE VRIES:** GOOD AFTERNOON, YOUR HONOR. LIZABETH
15 DE VRIES FOR THE PLAINTIFF J.P. ALONG WITH MY CO-COUNSEL
16 DARREN KESSLER.

17 **MR. KESSLER:** GOOD MORNING, YOUR HONOR.

18 **THE COURT:** GOOD AFTERNOON.

19 **MR. KESSLER:** OR GOOD AFTERNOON. THANK YOU.

20 **THE COURT:** SOMEONE CAN STAND AT THE MIDDLE MIC.

21 **MR. ENABNIT:** GOOD AFTERNOON, YOUR HONOR. RONALD
22 ENABNIT FOR DEFENDANT TRIAD FAMILY SERVICES.

23 **MS. WIDEN:** GOOD AFTERNOON, YOUR HONOR. REBECCA
24 WIDEN FOR THE COUNTY OF ALAMEDA AND SUE MAY AND DIANE DAVIS
25 MAAS.

1 **MS. LANDESS:** GOOD AFTERNOON, YOUR HONOR. ELIZABETH
2 GONG LANDESS FOR DEFENDANT MARIA MOORE.

3 **THE COURT:** NOW, MS. GONG, YOUR CLIENT SETTLED.
4 RIGHT?

5 **MS. LANDESS:** CORRECT, YOUR HONOR. WE JUST HAVE
6 SOME ADDITIONAL THINGS TO DO, INCLUDING A MOTION FOR GOOD
7 FAITH SETTLEMENT, AND THEN THE PLAINTIFFS ARE GOING TO BE
8 DOING A GOOD FAITH SETTLEMENT -- OR I'M SORRY -- A MINOR'S
9 COMPROMISE.

10 **THE COURT:** MINORS COMPROMISE.

11 **MS. LANDESS:** CORRECT.

12 **THE COURT:** WELL. YOU'RE WELCOME TO HAVE A SEAT. I
13 WON'T HAVE VERY MANY QUESTIONS FOR YOU.

14 **MS. LANDESS:** ALL RIGHT.

15 **THE COURT:** SO LET ME GIVE YOU A COUPLE OF
16 REFLECTIONS, AND THEN TELL YOU WHAT I'M THINKING ABOUT DOING.
17 AND THEN, I'LL HEAR YOUR OPINIONS.

18 ONE IS GIVEN HOW UNIQUE, AND IN MY VIEW, TERRIBLE
19 THIS CASE IS, I'VE TRIED REALLY HARD TO PUSH THIS THING
20 ALONG IN A WAY THAT IS EXPEDITIOUS UNDER THE FUNDAMENTAL
21 RULES OF FEDERAL PROCEDURE, NAMELY NUMBER ONE, RULE
22 NUMBER ONE. IT'S WHAT WE'RE HERE TO DO.

23 AND I BELIEVE AS A RESULT, AT LEAST, THERE HAS BEEN
24 ONE SETTLEMENT. I DON'T KNOW WHAT THE TERMS OF THAT
25 SETTLEMENT ARE, BUT HAD I STAYED THE ENTIRE CASE NOT

1 EVEN THAT WOULD HAVE HAPPENED.

2 SECOND: THE GOAL OF STAYING CASES PENDING THE
3 NINTH CIRCUIT REVIEW OF QUALIFIED IMMUNITY DECISIONS IS
4 TYPICALLY WHAT I DO, BECAUSE IT'S NOT EFFICIENT
5 OTHERWISE.

6 BUT THERE ARE -- THERE IS, IN MY VIEW, A LITTLE BIT
7 OF WIGGLE ROOM FOR THE COURT TO DO WHAT IT NEEDS TO DO
8 IN AN APPROPRIATE CASE.

9 WE REALLY, THOUGH, ARE GETTING TO A POINT HERE
10 WHERE IT IS NOT CLEAR TO ME THAT I CAN CONTINUE ON THIS
11 PARALLEL PATH.

12 REFLECTING ON ALL OF THE VARIOUS PARTIES'
13 POSITIONS, THOUGH, I BELIEVE THE FOLLOWING APPROACH IS
14 THE BEST THAT I CAN DO.

15 FIRST, I THINK I'M GOING TO ALLOW TRIAD TO BRING A
16 MOTION FOR SUMMARY JUDGMENT ON TWO OF THE THREE GROUNDS
17 THAT WERE PREVIOUSLY REQUESTED, THAT ARE REALLY SEPARATE
18 AND DISTINCT FROM WHAT IS HAPPENING AT THE NINTH
19 CIRCUIT.

20 AND THAT IS, NAMELY, TO BE ABLE TO ARGUE THAT IT IS
21 NOT A STATE ACTOR. I'M NOT SURE I BUY THE ARGUMENT,
22 GIVEN THE TEST. PRIVATE ENTITIES THAT WORK AS
23 GOVERNMENTAL AGENCIES ARE FREQUENTLY HELD RESPONSIBLE.

24 I DON'T KNOW ENOUGH ABOUT YOUR ORGANIZATION TO KNOW
25 WHETHER OR NOT YOU'VE GOT A GOOD CASE OR NOT, BUT, YOU

1 KNOW, PRIVATE PRISONS COME TO MIND. THEY ARE PRIVATE.
2 DOESN'T MEAN THAT THEY DON'T -- AREN'T BOUND BY 1983
3 RULES, EVEN THOUGH THEY ARE PRIVATE.

4 SO THAT'S NOT THE BE ALL AND END ALL OF THE
5 CIRCUMSTANCE.

6 BUT IF I FIND IN YOUR FAVOR ON THAT ISSUE, THEN
7 IT'S EFFECTIVELY OVER FOR TRIAD. WE MIGHT AS WELL KNOW.
8 THERE'S NO REASON TO WAIT FOR THE NINTH CIRCUIT FOR ME
9 TO DECIDE WHETHER THERE IS A TRIABLE ISSUE ON THAT TOPIC
10 OR WHETHER OR NOT YOU SHOULD BE -- YOU SHOULD HAVE
11 JUDGMENT AS A MATTER OF LAW.

12 AND YOU CAN TAKE YOUR CRACK AT NEGLIGENCE, ALTHOUGH
13 I FIND IT INCREDIBLY HARD TO BELIEVE THAT NEGLIGENCE
14 DOESN'T INVOLVE SOME ISSUES OF FACT. BUT HERE THIS IS
15 NOT A TYPICAL CASE. SO PERHAPS THERE ARE SOME ISSUES
16 THAT PERHAPS IT IS SO CLEAR. BUT I DON'T KNOW.

17 IN ANY EVENT, IT SEEMS TO ME THAT THOSE TWO LEGAL
18 ISSUES CAN BE RESOLVED.

19 HOWEVER, WITH RESPECT TO -- AND WHAT I DON'T WANT
20 YOU TO DO IS REHASH WHAT IS IN FRONT OF THE NINTH
21 CIRCUIT, WHICH WAS YOUR FIRST GROUND. I'M NOT CHANGING
22 MY OPINION ON THAT, SO THERE'S NO POINT IN YOU WASTING
23 YOUR TIME, ME WASTING MY TIME.

24 **MR. ENABNIT:** ON THE SIBLING STANDING ISSUE, YOUR
25 HONOR, THE SAME ONE THAT IS THE SUBJECT OF THE APPEAL.

1 **THE COURT:** CORRECT.

2 WITH RESPECT TO THE DEPOSITIONS OF THE COUNTY
3 EMPLOYEES, YOU KNOW, WE ALL CITE IQBAL LIKE IT'S WATER.
4 I MEAN, IT'S BE ALL AND END ALL OF WHAT WE DO HERE IN
5 THE DISTRICT COURTS. MAYBE NOT BE ALL AND END ALL, BUT
6 WE DO A LOT OF IT.

7 BUT IT SEEMS TO ME THAT GIVEN THAT THESE
8 EMPLOYEES -- AND CORRECT ME IF I AM WRONG -- THEY HAVE
9 NOW RETIRED?

10 **MS. WIDEN:** ONE HAS RETIRED.

11 **THE COURT:** SO WHAT IS THE OTHER ONE? SO WHO HAS
12 RETIRED AND WHO HASN'T RETIRED?

13 **MS. WIDEN:** IT'S MY UNDERSTANDING THAT DIANE DAVIS
14 MAAS HAS RETIRED AND SUE MAY HAS NOT.

15 **THE COURT:** ALL RIGHT.

16 I AM CONCERNED THAT WE DON'T HAVE THEIR TESTIMONY
17 RECORDED, AND IT IS POSSIBLE THAT IT WILL TAKE -- I
18 UNDERSTAND THAT YOU ASKED FOR AN ADDITIONAL -- FOR
19 ADDITIONAL TIME TO BRIEF THE NINTH CIRCUIT. THAT IS,
20 YOU ASKED FOR AN EXTENSION; IS THAT RIGHT?

21 **MS. WIDEN:** JUST THE 30-DAY STREAMLINED REQUEST,
22 YOUR HONOR. AND WE WERE TOLD THAT DOESN'T AFFECT THE DATE
23 THAT THE ORAL ARGUMENTS ARE SCHEDULED.

24 **THE COURT:** WELL, OF COURSE IT DOES. HOW DOES IT
25 NOT? THEY DON'T EVEN GIVE YOU DATES UNTIL THE THING IS

1 BRIEFED. THEY HAVEN'T EVEN ASSIGNED THE CASE, BECAUSE IT'S
2 NOT BRIEFED.

3 **MS. WIDEN:** THE CIRCUIT MEDIATOR, WE HAD A PHONE
4 CONFERENCE WITH THE CIRCUIT MEDIATOR. AND SHE ADVISED THE
5 PARTIES THAT THE DATE FOR ORAL ARGUMENTS IS DETERMINED
6 ACCORDING TO THE FILING DATE OF THE APPEAL, NOT FROM THE
7 BRIEFING SCHEDULE.

8 SO THAT'S -- I'M JUST TELLING YOU WHAT SHE ADVISED
9 US. SO I DON'T -- IT'S OUR POSITION THE 30 DAYS
10 WOULDN'T CHANGE THE SCHEDULE ON THE NINTH CIRCUIT
11 APPEAL.

12 **THE COURT:** I DON'T THINK YOU ARE RIGHT. SO -- AND,
13 YOU KNOW, HAVING SAT BY DESIGNATION ON THE NINTH CIRCUIT, THE
14 SPEED WITH WHICH YOU WILL GET A DECISION DEPENDS ON YOUR
15 PANEL, AND DEPENDS ON -- WELL, IT DEPENDS ON A WHOLE HOST OF
16 OTHER FACTORS. BUT IT COULD VERY WELL BE THAT WE DON'T HAVE A
17 DECISION FOR THREE YEARS, WHICH I THINK IS A PROBLEM IN THIS
18 PARTICULAR CASE.

19 MEMORIES FADE, AND WE NEED TO KNOW WHAT THE COUNTY
20 OFFICIALS' MEMORY AND TESTIMONY IS WITH RESPECT TO THE
21 UNDERLYING FACTS OF WHAT THEY DID AND WHAT THEY DIDN'T
22 DO.

23 AND IF WE DON'T GET IT SOON IT IS GOING TO BE A
24 PROBLEM, ESPECIALLY WITH RESPECT TO MAAS. THAT'S
25 M-A-A-S. SHE'S RETIRED.

1 SO THE SUPREME COURT'S CONCERN IN IQBAL THAT ONE OF
2 THE REASONS TO STAY A MATTER IS TO AVOID DIVERTING A
3 GOVERNMENT OFFICIAL FROM THEIR DUTIES DOESN'T APPLY TO
4 HER.

5 AND THE COST THAT IS DISCUSSED IN TERMS OF
6 EFFICIENCY AND TIME AND RESOURCES DOESN'T APPLY TO HER.

7 BUT EVEN WITH RESPECT TO MAY, IT'S GOING TO CREATE
8 HUGE PROBLEMS IN THREE YEARS IF I DON'T ORDER HER
9 DEPOSITION.

10 AND IRRESPECTIVE OF WHAT THE NINTH CIRCUIT DOES,
11 IRRESPECTIVE, THE DEPOSITIONS ARE GOING TO NEED TO BE
12 TAKEN WHETHER OR NOT THEY ARE ULTIMATELY -- WHETHER OR
13 NOT THE COUNTY IS THE ULTIMATELY FOUND LIABLE IS
14 SEPARATE AND DISTINCT.

15 AND IF THERE ARE PARTICULAR CONCERNS YOU HAVE WITH
16 RESPECT TO THE DEPOSITION, THEN I'M HAPPY TO ENTERTAIN
17 PROTECTIONS. BUT I THINK WE NEED TO KNOW BEFORE THEIR
18 MEMORIES FADE WHAT IT IS THEY DID.

19 SO WHAT I'M INCLINED TO DO IS TO ORDER THE
20 DEPOSITIONS. AND ONCE THOSE DEPOSITIONS HAPPEN AND
21 EFFECTIVELY STAY THE CASE, BECAUSE I DON'T THINK WE CAN
22 HAVE A TRIAL.

23 LET'S SAY I DENY THE MOTION FOR SUMMARY JUDGMENT.
24 I DON'T THINK I CAN HAVE A TRIAL WITH TRIAD AND NOT THE
25 COUNTY IF THE COUNTY IS ULTIMATELY FOUND TO BE

1 POTENTIALLY LIABLE BY THE NINTH CIRCUIT.

2 SO THIS IS WHAT WE CALL "A MESS." BUT I THINK IT'S
3 THE BEST THAT I CAN DO, GIVEN THE CIRCUMSTANCES. I'M
4 HAPPY TO HEAR YOUR PERSPECTIVES.

5 **MS. DE VRIES:** YOUR HONOR, THE PLAINTIFF REALLY
6 APPRECIATES THE TIME AND ENERGY YOU'VE PUT INTO THIS ANALYSIS
7 AND THE DEFERENCE THAT YOU HAVE GIVEN TO THE SIGNIFICANCE OF
8 THE ISSUES AT HAND, AS WELL AS THE STATUS OF THE YOUNG
9 PLAINTIFF:

10 **THE COURT:** IS THAT ALL?

11 **MR. ENABNIT:** ONE POINT I BELIEVE WAS BROUGHT UP IN
12 THE MOTION, AS WELL, IS IN ADDITION TO THE TWO DEFENDANTS, THE
13 TWO NAMED DEFENDANTS, MAAS AND CHRISTINE NYGAARD, SUPERVISOR.

14 **MS. WIDEN:** DIANE MAAS.

15 **MR. ENABNIT:** AS WELL AS THE SUPERVISOR OF DIANE
16 DAVIS MAAS WAS SOMEONE TRIAD AND PLAINTIFF THOUGHT SHOULD BE
17 DEPOSED, AS WELL.

18 **THE COURT:** WELL, I WOULD ADD THAT PERSON.

19 **MR. ENABNIT:** YOUR HONOR, THE QUESTION I WOULD HAVE
20 FOR THE COURT, THEN, IS IF THE COURT IS INCLINED TO ALLOW
21 THESE DEPOSITIONS TO GO FORWARD, I WOULD REQUEST AN EXTENSION
22 OF TIME TO FILE TRIAD'S MOTION FOR SUMMARY JUDGMENT.

23 **THE COURT:** THAT WOULD BE FINE. IT WOULD BE
24 APPROPRIATE.

25 **MR. ENABNIT:** THANK YOU.

1 **MS. WIDEN:** YOUR HONOR, IF I MAY BE HEARD. AND I
2 APOLOGIZE. I HAVE A VERY HOARSE VOICE, SO I'LL TRY TO
3 COMMUNICATE AS CLEARLY AS I CAN.

4 IT'S THE COUNTY'S POSITION WITH RESPECT TO THESE
5 DEPOSITIONS THAT THEY SHOULD BE STAYED, THAT THE
6 COURT -- SINCE THE COURT DOES NOT HAVE JURISDICTION OVER
7 THE CLAIMS THAT ARE CURRENTLY BEFORE THE NINTH CIRCUIT,
8 THERE'S NO WAY TO SEPARATE OUT THOSE CLAIMS.

9 THESE DEPOSITIONS WILL IMPLICATE THOSE CLAIMS AND I
10 THINK THAT'S PROBLEMATIC BASED ON THE CASE LAW THAT WE
11 HAVE CITED IN OUR PAPERS.

12 PLAINTIFF AND TRIAD HAVE NOT EXPLAINED HOW THEY CAN
13 TAKE THESE DEPOSITIONS SO THAT THEY DO NOT IMPLICATE THE
14 CLAIMS THAT ARE CURRENTLY ON APPEAL.

15 **THE COURT:** WELL, CERTAINLY THEY CAN'T ASK ANYTHING
16 WITH RESPECT TO CONTENTION QUESTIONS, ANYTHING WITH RESPECT TO
17 SPECIFIC CLAIMS. BUT IT WOULD HAVE TO BE CLEARLY THE EPITOME
18 OF WHAT WE BELIEVE TO BE JUST THE FACTS.

19 THERE ARE LOTS OF TIMES WHEN DEPOSITIONS GO INTO OR
20 IMPEDE ON POTENTIAL LEGAL THEORIES OR STRATEGIES.

21 AND, YOU KNOW, BUT LIKE I SAID, I DON'T KNOW
22 THAT -- WELL, ANYWAY --

23 **MS. WIDEN:** I JUST DON'T SEE HOW THESE DEPOSITIONS
24 COULD PROCEED WITHOUT IMPLICATING THOSE ISSUES. AND I THINK
25 THAT THAT IS --

1 **THE COURT:** THEY ARE NOT GOING TO LIE, ARE THEY?
2 THEY ARE NOT GOING TO LIE.

3 **MS. WIDEN:** I AGREE THE FACTS ARE THE FACTS. THEY
4 ARE WHAT THEY ARE.

5 **THE COURT:** ALL WE'RE TRYING TO GET ON PAPER BEFORE
6 THEY FORGET IT --

7 **MS. WIDEN:** I UNDERSTAND THE PREJUDICE ISSUE THAT
8 THE COURT IS RELYING ON. I DO UNDERSTAND THAT. AND THAT'S
9 SOMETHING THAT THE COURT HAS TO WEIGH IN IN CONSIDERATION. I
10 DO UNDERSTAND THAT.

11 BUT WHEN IT COMES TO THE CLAIMS THAT ARE CURRENTLY
12 ON APPEAL AND THE FACTS THAT SUPPORT THOSE CLAIMS AND
13 THE DEFENSES THAT ARE BEING ASSERTED AND THAT ARE ON
14 APPEAL, IT'S MY UNDERSTANDING OF THE CASES THAT THROUGH
15 THE CASES THAT HAVE BEEN CITED, IT'S NOT JUST IQBAL.
16 THERE WERE SOME OTHER CASES CITED IN OUR PAPERS.

17 AND I WOULD POINT OUT PLAINTIFFS' COUNSEL HAS NOT
18 CITED A SINGLE CASE TO SUPPORT THEIR POSITION ON THIS.
19 BUT ON THOSE CASES IF THE FACTS ARE INTERMINGLED IN SUCH
20 A WAY THAT THEY IMPLICATE THE CLAIMS ON APPEAL, THEN THE
21 DEPOSITIONS SIMPLY CAN'T GO FORWARD.

22 **THE COURT:** BUT THE CLAIM ON APPEAL IS MERELY A
23 LEGAL ISSUE THAT IN TERMS OF HOW YOU'VE TRIED TO REFRAME THE
24 PLAINTIFFS' CLAIM HERE. AND SO I DON'T KNOW THAT THOSE -- I
25 DON'T KNOW THE FACTS ABOUT WHAT IT IS THEY DID IN TERMS OF --

1 WHAT THE DEFENDANTS DID IN TERMS OF HOW THEY DEALT WITH THE
2 SITUATION IMPACT, WHETHER OR NOT AS A LEGAL MATTER STANDING
3 EXISTS FOR THIS PARTICULAR PLAINTIFF.

4 THAT STANDING QUESTION HAPPENS AND EXISTS
5 IRRESPECTIVE OF THE FACTS. SO I THINK IN MANY WAYS THEY
6 ARE CLEARLY SEGREGABLE. THAT IS, IT DIDN'T MATTER. IT
7 DOESN'T MATTER WHAT THEY DID.

8 IT MATTERS ABSOLUTELY NOT ONE SCINTILLA, RIGHT,
9 WHAT THEY DID IN TERMS OF YOUR LEGAL ARGUMENT THAT
10 STANDING DOESN'T EXIST.

11 HOW IS IT WHAT THEY DID IMPACTS THE CONSTITUTIONAL
12 CLAIM? I DON'T UNDERSTAND.

13 **MS. WIDEN:** WELL, PRESERVING TESTIMONY IN ANY
14 RESPECT IN THIS CASE ON ANY OF THE FACTS, THAT'S GOING TO
15 AFFECT MY CLIENT'S ABILITY TO BRING THEIR LEGAL DEFENSES.

16 **THE COURT:** THEY ARE NOT GOING TO LIE. HOW IS IT
17 THAT THE CONSTITUTIONAL CLAIMS THAT YOU'RE CURRENTLY
18 LITIGATING, HOW IS THAT IMPACTED IN ANY WAY BY ANYTHING? CAN
19 YOU GIVE ME A SINGLE EXAMPLE OF SOMETHING THAT YOUR CLIENT DID
20 OR COULD HAVE DONE WHERE THEIR TESTIMONY MIGHT BE, WHERE THEY
21 MAY BE ASKED A QUESTION THAT HAS ANY IMPACT ON THE LEGAL
22 QUESTION BEFORE THE NINTH CIRCUIT?

23 **MS. WIDEN:** WELL, I THINK THERE'S MORE THAN ONE
24 LEGAL QUESTION BEFORE THE NINTH CIRCUIT. THERE'S CERTAINLY
25 THE STANDING ISSUE, WHICH IS PART, ONE PRONG ON THE --

1 **THE COURT:** SO LET'S FOCUS ON THE STANDING ISSUE
2 ONLY.

3 **MS. WIDEN:** OKAY.

4 **THE COURT:** IS THERE ANYTHING THAT YOU CAN POINT TO?

5 **MS. WIDEN:** WELL, I MEAN YOU ARE RIGHT TO THE EXTENT
6 THAT THE NINTH CIRCUIT'S ANALYSIS IS GOING TO BE BASED ON THE
7 FOUR CORNERS OF THE PLAINTIFFS' COMPLAINT. THAT'S TRUE.

8 **THE COURT:** AND THE LAW.

9 **MS. WIDEN:** YES, AND THE LAW.

10 **THE COURT:** AND PRECEDENCE.

11 IT'S A VERY NICE, COMPARTMENTALIZED LAW SCHOOL-TYPE
12 QUESTION, FOR WHICH YOUR PLAINTIFFS -- YOUR, I'M
13 SORRY -- FOR WHICH YOUR CLIENT'S TESTIMONY HAS NO
14 IMPACT, IN MY VIEW.

15 **MS. WIDEN:** I THINK THAT'S TRUE AS TO THE NINTH
16 CIRCUIT CASE ITSELF IN TERMS OF WHAT EVIDENCE THEY ARE GOING
17 TO BE LOOKING AT TO MAKE THE DETERMINATION.

18 I GUESS MY POINT IS THAT THE FACTS AND THE ISSUES
19 SURROUNDING THOSE, THAT THAT CLAIM -- OUR DEFENSE IS
20 QUALIFIED IMMUNITY.

21 **THE COURT:** GREAT. THAT'S YOUR ONLY DEFENSE.
22 RIGHT?

23 **MS. WIDEN:** YES.

24 **THE COURT:** THAT'S YOUR ONLY DEFENSE. SO THEY ARE
25 EITHER GOING TO SAY THE CONSTITUTIONAL CLAIM DOESN'T EXIST, IN

1 WHICH CASE YOU WIN; OR THEY'RE GOING TO SAY IT DOES EXIST, IN
2 WHICH CASE THE FACTS ARE THE FACTS.

3 **MS. WIDEN:** WELL, THAT'S TRUE. BUT THERE'S ALSO A
4 CLEARLY ESTABLISHED COMPONENT TO THIS APPEAL, WHICH I THINK
5 DOES -- SOMEHOW I NEED TO --

6 **THE COURT:** BUT THAT DOESN'T CHANGE THE FACTS. THAT
7 IS, HOW DOES THAT CHANGE THE FACTS?

8 **MS. WIDEN:** IT DOESN'T CHANGE THE FACTS,
9 NECESSARILY, BUT THE TESTIMONY IS THE TESTIMONY. AND IT'S
10 GOING TO AFFECT THE COUNTY'S LEGAL INTEREST.

11 WHETHER OR NOT THE FACTS ARE THE FACTS, THEY ARE
12 GOING TO HAVE TO COME IN AND ASSERT OBJECTIONS, THAT
13 KIND OF THING. I MEAN, AS IT STANDS RIGHT NOW THE COURT
14 DOESN'T HAVE JURISDICTION TO DETERMINE OBJECTIONS
15 RELEVANT TO ANY OF THE ISSUES THAT ARE IMPLICATED ON
16 APPEAL.

17 **THE COURT:** YOU ARE RIGHT. AND AFTER THEIR
18 TESTIMONY IS MEMORIALIZED, I'M NOT GOING TO DO ANYTHING WITH
19 IT.

20 **MS. WIDEN:** IF THERE'S AN OBJECTION THAT ARISES
21 DURING THE DEPOSITION --

22 **THE COURT:** THEN YOU OBJECT, LIKE YOU ALWAYS DO.
23 IT'S ON THE RECORD. AND WHEN IT BECOMES RIPE, IT BECOMES
24 RIPE. HOW MANY TIMES DO WE DEAL WITH OBJECTIONS BEFORE TRIAL
25 OR SUMMARY JUDGMENT? NEVER. YOU PUT THEM ON THE RECORD. YOU

1 PRESERVE IT. SO WHAT?

2 THAT'S NOT -- THERE'S NOTHING THAT HARMS YOUR
3 CLIENT IF YOU OBJECT.

4 **MS. WIDEN:** SOMETIMES THERE ARE SITUATIONS IN
5 DEPOSITIONS WHERE THE DEPOSITION IS HALTED AND YOU GO TO THE
6 JUDGE FOR A DETERMINATION OF AN OBJECTION. I'M NOT SAYING I
7 CAN ANTICIPATE THAT HAPPENING HERE. I DON'T KNOW IF IT WILL.

8 **THE COURT:** WELL, IF YOU THINK YOU NEED TO DO THAT,
9 THEN YOU DO THAT. THAT'S NOT --

10 **MS. WIDEN:** MY POINT IS IT'S THE COUNTY DEFENDANT'S
11 POSITION THAT THIS COURT IS CURRENTLY -- DOES NOT HAVE
12 JURISDICTION OVER PLAINTIFFS' CLAIMS AGAINST COUNTY
13 DEFENDANTS. AND IT WOULD BE IMPOSSIBLE TO GO TO A DEPOSITION
14 AND PROTECT THE COUNTY'S LEGAL INTERESTS IN THIS CASE WITHOUT
15 HAVING TO GET INTO THE MATTERS ON THE NINTH CIRCUIT.

16 **THE COURT:** THAT'S WHY I'M GIVING YOU AN OPPORTUNITY
17 TO EXPLAIN, AND YOU REALLY HAVEN'T YET BECAUSE THERE'S --
18 WELL, YOU HAVEN'T EXPLAINED THE OVERLAP.

19 **MS. WIDEN:** WELL, I COULD DO THAT, YOUR HONOR, IF
20 YOU LIKE. I WOULD POINT OUT THE PLAINTIFF AND TRIAD HAVE NOT
21 CONTESTED THE FACT THAT THERE'S OVERLAP ON THESE ISSUES.

22 THERE'S NO WAY, IN OTHER WORDS, TO GET FACTS AND
23 THE TESTIMONY OF THESE WITNESSES IN A WAY THAT THOSE
24 FACTS AND TESTIMONY ARE NOT GOING TO IMPLICATE THE
25 ISSUES ON APPEAL. IT'S ALL ONE AND THE SAME. IT'S THE

1 SAME TRANSACTION.

2 **THE COURT:** YOU KEEP SAYING THAT.

3 **MS. WIDEN:** THE FACTS ARE --

4 **THE COURT:** BUT WHEN I ASKED YOU FOR SPECIFICS YOU
5 HAVEN'T IDENTIFIED ANYTHING.

6 **MS. WIDEN:** OKAY. WELL, FOR EXAMPLE, WHETHER OR NOT
7 DIANE DAVIS MAAS SAID CERTAIN THINGS TO TRIAD EMPLOYEES.
8 WHETHER SHE SAID -- WHETHER HER CONDUCT IN THIS SITUATION, IN
9 THIS CASE, THAT -- WHETHER OR NOT THAT CONDUCT HAPPENED THE
10 WAY THAT SOME OF TRIAD'S EMPLOYEES HAVE SAID IT HAPPENED;
11 WHETHER IT HAPPENED THE WAY SHE SAYS IT HAPPENED, THOSE ARE
12 ALL ISSUES THAT BEAR ON THE REASONABLENESS OF HER CONDUCT,
13 WHETHER HER CONDUCT WAS WITHIN THE QUALIFIED IMMUNITY STANDARD
14 AT LEAST ON THE SECOND PRONG, THE CLEARLY ESTABLISHED PRONG.

15 BUT THERE'S -- SO IT JUST -- GOING FORWARD IN THE
16 CASE THERE'S NO WAY FOR THEIR TESTIMONIES TO BE CAPTURED
17 IN A WAY THAT DOES NOT HAVE THE CLAIMS AGAINST THEM THAT
18 ARE CURRENTLY ON -- IN THE NINTH CIRCUIT IN A WAY THAT
19 DOESN'T IMPLICATE THOSE.

20 IT'S ALL -- ALL OF THE FACTS ARE -- IT'S A SINGLE
21 TRANSACTION IN OCCURRENCE. THERE'S NO WAY TO SINGLE IT
22 OUT IN THIS CASE. AND I HAVEN'T HEARD --

23 **THE COURT:** SO IF YOU NEED THAT TESTIMONY WHY WOULD
24 YOU BE GOING TO THE NINTH CIRCUIT?

25 **MS. WIDEN:** IF I -- I'M TALKING ABOUT IF THIS CASE

1 PROCEEDS PAST THE NINTH CIRCUIT. I MEAN, RIGHT NOW IT SEEMS
2 CLEAR THAT SINCE THE COURT DIDN'T CERTIFY THE APPEAL AS
3 FRIVOLOUS THAT ALL OF PLAINTIFFS' CLAIMS AGAINST THE COUNTY
4 DEFENDANTS HAVE BEEN STAYED. THIS COURT DOESN'T HAVE
5 JURISDICTION ON THOSE CLAIMS.

6 SO ACCORDING TO THE CASE LAW THAT I'VE READ AND
7 THAT WE HAVE CITED IN OUR PAPERS, ANY DISCOVERY ON THOSE
8 CLAIMS IS NOT PERMITTED TO GO FORWARD. THERE'S JUST NO
9 JURISDICTION IN THIS COURT TO CONTINUE WITH DISCOVERY
10 PROCEEDINGS, AT LEAST AS TO THE COUNTY DEFENDANTS.

11 SO OTHER THAN REFERRING TO THE CASES THAT WE'VE
12 CITED ON THAT POINT, I'M NOT -- I'M SORRY I'M NOT MAKING
13 MYSELF CLEAR ENOUGH TO THE COURT, BUT I THINK THAT
14 THAT'S THE COUNTY'S POSITION.

15 **THE COURT:** RESPONSE.

16 **MS. DE VRIES:** YOUR HONOR, IF THIS WERE A SITUATION
17 WHERE A PENDING QUALIFIED IMMUNITY MATTER WERE BEFORE THE
18 NINTH CIRCUIT ON SUMMARY JUDGMENT, I COULD UNDERSTAND
19 MS. WIDEN'S ARGUMENTS. BUT WE'RE TALKING ABOUT A MOTION TO
20 DISMISS. SO THAT THE CONDUCT AND QUESTIONS RELATING TO
21 DIFFERENCES IN TESTIMONY WILL NOT BE BEFORE THIS COURT UNTIL
22 WE COME BACK. AND SO THE QUESTIONS THAT MS. WIDEN IS RAISING
23 RELATING TO THE REASONABLENESS OF CONDUCT OF, SAY, MS. DIANE
24 DAVIS MAAS IN COMPARISON TO WHAT OTHER WITNESSES HAVE
25 DESCRIBED IS NOT BEFORE THE COURT OR THE NINTH CIRCUIT.

1 WHAT REALLY IS RELEVANT IS PREJUDICE. WE'RE
2 TALKING ABOUT A THREE OR REALLY FOUR-YEAR DELAY SINCE
3 PLAINTIFF STARTED ASKING FOR THESE DEPOSITIONS LAST
4 DECEMBER 2017, FOR A CASE WITH AN EIGHT-YEAR-OLD
5 PLAINTIFF.

6 MOREOVER, THE STANDING ON QUALIFIED IMMUNITY ISSUES
7 ON APPEAL ARE PURELY LEGAL ISSUES. IN FACT, THE TEST
8 THE NINTH CIRCUIT WILL HAVE TO DECIDE IF IT EVEN HAS
9 JURISDICTION OVER THESE CLAIMS WILL BE TO TAKE THE FACTS
10 PLED IN THE COMPLAINT AS TRUE.

11 **MR. ENABNIT:** AND TRIAD'S INTERESTS TODAY IS SIMPLY
12 TO ENSURE THAT IT IS ENTITLED TO DUE PROCESS. DUE PROCESS FOR
13 TRIAD REQUIRES THAT IT NOT GO TO TRIAL WITHOUT THE DEPOSITIONS
14 OF THESE CRITICAL WITNESSES.

15 SO I DON'T KNOW IF THE COURT IS INCLINED TO VACATE
16 THE APRIL 29, 2019 TRIAL DATE. BUT IF IT IS NOT, THEN
17 TRIAD'S DUE PROCESS RIGHTS ARE CLEARLY VIOLATED BY NOT
18 BEING ABLE TO TAKE CRITICAL DEPOSITIONS OR TO COMPEL THE
19 WITNESSES FROM THE COUNTY AT THE TIME OF TRIAL.

20 **MS. DE VRIES:** AND YOUR HONOR, JUST AN ASIDE, THERE
21 ARE THREE WITNESSES THAT WE HAVEN'T YET BEEN ABLE TO CAPTURE
22 THEIR TESTIMONY FROM, EITHER. AND THOSE ARE WITNESSES THAT
23 I'VE BEEN IN CONTACT WITH MR. ENABNIT ABOUT, THE SCHEDULING
24 AFTER THE CUTOFF, WHICH WOULD BE TODAY. AND WE WERE GOING TO
25 PRESENT YOUR HONOR WITH A STIPULATION OR REQUEST THAT THE

1 DISCOVERY CUTOFF SHOULD BE EXTENDED BRIEFLY TO COMPLETE THOSE
2 THREE DEPOSITIONS.

3 IT'S NOT BEFORE THE COURT RIGHT NOW. I'M JUST
4 LETTING YOU KNOW IF YOU ARE THINKING ABOUT ENTERING THAT
5 STAY WE WOULD VERY MUCH LIKE TO ALSO CAPTURE THESE
6 THREE, AS WELL.

7 **MR. ENABNIT:** TRIAD CONCURS WITH THAT REQUEST.

8 **THE COURT:** I DIDN'T HEAR YOU.

9 **MR. ENABNIT:** TRIAD CONCURS, JOINS IN THAT REQUEST,
10 AS WELL, YOUR HONOR.

11 **THE COURT:** AND WHERE -- HOW FAR OUT DO YOU WANT?
12 WHAT'S THE CURRENT CUTOFF?

13 **MS. DE VRIES:** IT'S TODAY, YOUR HONOR.

14 **THE COURT:** OKAY. WELL, IN LIGHT OF OUR DISCUSSION,
15 I AM GOING TO ORDER THE DEPOSITIONS OF -- CAN YOU SPELL HER
16 NAME? THAT M-E-S-D-A-M-E-S. RIGHT? MESDAMES.

17 **MS. DE VRIES:** OH, MESDAMES, THAT'S PLURAL FOR
18 MS. I'M SORRY.

19 **THE COURT:** I WAS LOOKING FOR THE FIRST SUE MAY,
20 SORRY. THAT'S IT. SUE MAY, DIANE DAVIS MAAS AND CHRISTINE
21 NYGAARD, N-Y-G-A-A-R-D.

22 TO THE EXTENT THAT THE COUNTY WOULD LIKE ME TO
23 ENTERTAIN ANY OTHER OR ANY PROTECTIONS I WOULD ENTERTAIN
24 THOSE.

25 ANY OBJECTIONS SHOULD BE MADE ON THE RECORD. TO

1 THE EXTENT THE COUNTY FEELS IT NECESSARY TO INSTRUCT
2 WITNESSES NOT TO ANSWER, THEY SHOULD DO THAT AND
3 IDENTIFY THE BASIS FOR THE INSTRUCTION.

4 ONCE THOSE DEPOSITIONS ARE TAKEN AND THE
5 DEPOSITIONS OF WHOM?

6 **MR. ENABNIT:** DEFENDANT MARIA MOORE. AND THEN, WE
7 HAVE TWO EMPLOYEES FROM THE COUNTY OF SAN JOAQUIN, AND THEY
8 ARE LYDIA, L-Y-D-I-A, GOMES, G-O-M-E-S.

9 **MS. DE VRIES:** Z.

10 **MR. ENABNIT:** Z. I'M SORRY. G-O-M-E-Z. AND
11 SHANNON, S-H-A-N-N-O-N, BLANKENSHIP, B-L-A-N-K-E-N-S-H-I-P.
12 THOSE DEPOSITIONS WERE NOTICED BUT WERE NOT ABLE TO BE TAKEN
13 DURING THE DISCOVERY CUTOFF PERIOD.

14 **THE COURT:** SO THOSE ARE ORDERED, AND THEN DISCOVERY
15 WILL BE STAYED. THE ONLY MOTION WORK WHICH IS AUTHORIZED IS
16 THE MOTION OF TRIAD TO BRING SUMMARY JUDGMENT ON THE GROUNDS
17 OF TRIAD NOT BEING A STATE ACTOR.

18 AND THE SECOND GROUND WITH RESPECT TO NEGLIGENCE IS
19 OUTLINED IN DOCKET NUMBER 79.

20 THE TRIAL DATE IS VACATED. AND BEYOND THAT, THE
21 CASE WILL BE STAYED UNTIL WE HEAR BACK ON THE LEGAL
22 ISSUE WITH RESPECT TO WHAT IS PENDING BEFORE THE NINTH
23 CIRCUIT.

24 IS THERE ANYTHING THAT THE PLAINTIFF WOULD LIKE TO
25 ADD TO THE RECORD IN TERMS OF AVOIDING THE -- WHAT THE

1 COUNTY CLAIMS ARE OVERLAPPING ISSUES?

2 I STILL HAVE YET TO HEAR A CLEAR ARTICULATION OF
3 THAT. BUT YOU WANT TO ADD ANYTHING FOR THE RECORD AT
4 THIS POINT?

5 **MS. DE VRIES:** ARTICLE III STANDING IS A PURELY
6 LEGAL ISSUE, AS-IS WHETHER A CLAIM IS CLEARLY ESTABLISHED.

7 IT'S A MATTER OF LAW. IT'S NOT A MATTER OF FACT.
8 AND THE FACTS THAT WOULD BE CONTESTED HERE ARE THOSE
9 THAT ARE ALLEGED IN THE COMPLAINT.

10 **THE COURT:** OKAY.

11 **MS. WIDEN:** YOUR HONOR, MAY I ASK ONE MORE QUESTION
12 TO CLARIFY? ARE THE DEPOSITIONS THAT YOU'VE ORDERED TO GO
13 FORWARD, ARE THOSE DEPOSITIONS OF THE COUNTY EMPLOYEES? ARE
14 THOSE DEPOSITIONS ONLY AS TO THE CONTRIBUTORY NEGLIGENCE ISSUE
15 THAT THE PLAINTIFF AND TRIAD HAVE DISCUSSED IN THEIR PAPERS?
16 OR ARE THEY PERMITTED TO GO INTO FACTS RELATING TO ALL ISSUES
17 AND ALL CLAIMS IN THE CASE?

18 **MS. DE VRIES:** YOUR HONOR, AS DEFENDANTS HAVE
19 ALREADY ARGUED, AND THE COURT HAS RESPONDED, THERE ARE
20 PROTECTIONS THAT ARE OBVIOUS. FOR EXAMPLE, WE CAN'T ASK
21 ABOUT, SAY, CONTENTION ISSUES, AS YOU'VE SAID.

22 HOWEVER, I -- WE, TRIAD AND THE PLAINTIFF --
23 OUTLINED AREAS OF TESTIMONY IN OUR MOVING PAPERS. I
24 DIDN'T SEE ANY RESPONSE TO THOSE OR OBJECTION TO THOSE
25 AREAS OF TESTIMONY IN MS. WIDEN'S PAPERS YET. AND IF

1 THERE ARE PARTICULAR PROTECTIONS THAT SHE WOULD LIKE, I
2 WOULD LOVE TO SEE THOSE IN ADVANCE OF THE DEPOSITIONS.

3 ALSO TO YOUR POINT, YOUR HONOR, IF PLAINTIFF WERE
4 TO FILE HIS NEGLIGENCE CLAIM IN STATE COURT HE WOULD BE
5 ABLE TO ASK THE COURT FOR A MOTION TO COMPEL PERCIPIENT
6 WITNESS TESTIMONY.

7 THERE'S NOTHING DIFFERENT HERE. THESE ARE
8 PERCIPIENT WITNESSES, NOT JUST PARTIES. AND
9 MS. NYGAARD, IN FACT, IS NOT A NAMED PARTY, NOR WOULD
10 SHE BE SEEKING QUALIFIED IMMUNITY.

11 AND THE ISSUES OF QUALIFIED IMMUNITY DO NOT APPLY
12 TO TRIAD, OF COURSE. AND SO WE'RE REALLY TALKING APPLES
13 AND ORANGES.

14 WE ALSO IN TERMS OF JURISDICTION, YOUR HONOR, YOU
15 CERTAINLY CURRENTLY HAVE JURISDICTION OVER THE
16 NEGLIGENCE CLAIMS THAT ARE CURRENTLY PENDING AS
17 SUPPLEMENTAL JURISDICTION. SO THIS IS JUST LIKE A
18 PERCIPIENT WITNESS BEING COMPELLED TO TESTIFY.

19 **THE COURT:** SO I SEE ON PAGE FOUR OF SEVEN, DOCKET
20 87, THE FOUR AREAS OF INQUIRY.

21 **MS. WIDEN:** I'M SORRY, YOUR HONOR. WHICH PAGE ARE
22 YOU ON AGAIN? I'M SORRY.

23 **THE COURT:** IT IS PAGE FOUR OF SEVEN. THOSE ARE THE
24 FOUR AREAS OF INQUIRY THAT THEY HAVE REQUESTED.

25 **MS. WIDEN:** OKAY.

1 **THE COURT:** NOTICE, DISCUSSIONS, TRIAD'S DUTIES AND
2 RESPONSIBILITIES FROM THE COUNTY'S PERSPECTIVE. I'M NOT QUITE
3 SURE WHAT FOUR IS.

4 **MS. WIDEN:** SO IS THE COURT THEN INCLINED TO ALLOW
5 THE DEPOSITIONS TO GO FORWARD AS TO THESE SUBJECT MATTERS
6 ONLY? OR TO ALL OTHER --

7 **THE COURT:** I THINK THESE AREAS ARE FACT-BASED AREAS
8 THAT SEEM TO GET AT THE HEART OF THE PERCIPIENT MEMORIES.
9 AND, YOU KNOW, CLEARLY IF AND WHEN THE COUNTY COMES BACK INTO
10 THE CASE, IF THERE'S SOMETHING THAT WAS OUTSIDE OF THESE AREAS
11 THAT SOMEHOW THE COUNTY, OR RAISED OTHER ISSUES THAT WERE NOT
12 ANTICIPATED BECAUSE OF ITS ACTIVE ROLE IN THE LITIGATION, THEN
13 WE CAN ALWAYS RECONSIDER WHETHER A SUPPLEMENT TO THE
14 DEPOSITION NEEDS TO HAPPEN OR NOT.

15 BUT THOSE THREE AREAS, I THINK, SHOULD BE
16 SUFFICIENT.

17 **MR. ENABNIT:** YOUR HONOR, I CAN ANTICIPATE AN AREA
18 OF CONTROVERSY IN ADDITION TO: "WHAT DID YOU DO? WHY DID YOU
19 DO IT?"

20 TRIAD'S POSITION IS THAT'S NOT A CONTENTION
21 QUESTION THAT IS RELATED TO -- THAT'S SIMPLY RELATED TO
22 THEIR MEMORY AS TO WHAT WENT INTO A PARTICULAR DECISION,
23 A PARTICULAR STATEMENT, A PARTICULAR ACTION.

24 IT'S NOT BEFORE THE COURT TODAY BUT --

25 **MS. DE VRIES:** YOUR HONOR, PLAINTIFF AND TRIAD HAVE

1 ATTEMPTED TO OUTLINE AREAS OF TESTIMONY. AND I DON'T BELIEVE
2 I'VE YET HEARD FROM THE COUNTY DEFENDANTS WHAT AREAS OF
3 TESTIMONY WOULD NOT BE PERMISSIBLE OTHER THAN A KIND OF BLANK
4 CHECK REQUEST FOR ANYTHING NOT RELATED TO NEGLIGENCE.

5 **MS. WIDEN:** IT'S OUR POSITION THAT ALL OF THE
6 TESTIMONY IS IMPROPER SO THAT --

7 **THE COURT:** I UNDERSTAND THAT THAT'S YOUR POSITION.

8 **MS. WIDEN:** YES.

9 **THE COURT:** THESE ARE THE FOUR AREA, LIKE I SAID I
10 DON'T KNOW WHAT YOU MEAN BY NUMBER FOUR, SO I'M FOCUSING ON
11 THREE, ONE, TWO AND THREE. I AM MOST CONCERNED ABOUT GETTING
12 THE PERCIPIENT FACTS MEMORIALIZED. I CAN'T -- AND YOU KNOW
13 THIS CASE BETTER THAN I DO. BUT BEYOND THESE THREE AREAS --
14 SO LET'S SEE. WHAT COULD I THINK OF?

15 I WOULD SAY THIS WOULD EXCLUDE, YOU KNOW, ISSUES ON
16 WHICH YOU HAVEN'T OR WOULD TRADITIONALLY HAVE TAKEN,
17 LET'S SAY, WRITTEN DISCOVERY FROM THE DEFENDANTS, WHICH
18 YOU HAVEN'T DONE.

19 SO, YOU KNOW, I WOULD TAKE IT THAT YOU WOULD ASK
20 THEM ABOUT TRAINING PROTOCOLS IN WRITING. YOU HAVEN'T
21 DONE THAT. I WOULDN'T -- I DON'T THINK THAT THAT'S AN
22 APPROPRIATE AREA OF INQUIRY. THAT REALLY GOES TO THE
23 COUNTY. THAT DOESN'T GO TO WHAT HAPPENED IN THIS
24 PARTICULAR CASE IN TERMS OF WHAT THEY DID WITH THIS
25 PARTICULAR PLAINTIFF.

1 YOU KNOW, IF YOU THINK IT'S INAPPROPRIATE, THEN
2 INSTRUCT. BUT MY VIEW IS THAT THE FOCUS SHOULD BE ON,
3 AGAIN, THESE WITNESSES DID WITH RESPECT TO THESE -- TO
4 THIS PARTICULAR PLAINTIFF AND THEIR SITUATION.

5 **MS. WIDEN:** THESE THREE SUBJECT MATTERS THAT ARE
6 OUTLINED IN THE -- I JUST WANT TO MAKE SURE WE'RE CLEAR
7 BECAUSE I CAN SEE SOME ISSUES ARISING FROM --

8 **THE COURT:** WELL, THAT'S WHY --

9 **MS. WIDEN:** SO IF WE'RE LIMITED TO THE THREE ISSUES
10 THAT ARE IN THIS OR THAT THE PLAINTIFFS HAVE PUT IN THEIR
11 PAPERS, THEN I THINK WE COULD PROBABLY WORK WITH THAT, IN
12 TERMS OF FIGURING OUT THE SCOPE.

13 **THE COURT:** WORKING WITH THAT IS A GOOD THING
14 BECAUSE, AGAIN, THE COUNTY -- IF THE NINTH CIRCUIT RULES
15 AGAINST THE COUNTY, THEY ARE GOING TO COME BACK. AND I'M
16 GOING TO HAVE TO FIGURE OUT HOW TO GET THEM REENGAGED IN THE
17 DISCOVERY. AND THAT, YOU KNOW, IF THEY ARE TAKING A POSITION
18 THAT, YOU KNOW, IT'S OUTSIDE THE SCOPE, THEN OBVIOUSLY THAT
19 MEANS THAT IF YOU COME BACK THERE'S GOING TO BE A SECOND
20 DEPOSITION WHICH IS MUCH MORE EXPANSIVE AND RELATED TO MONELL
21 CLAIMS OR OTHER KINDS OF CLAIMS THAT MIGHT EXIST FOR PURPOSES
22 OF THE COUNTY, WHICH ARE NOT AT ISSUE.

23 **MS. DE VRIES:** AND, YOUR HONOR, WE SPECIFICALLY ONLY
24 IDENTIFIED THREE INDIVIDUALS. WE DIDN'T ASK FOR DOCUMENTS.
25 WE DIDN'T ASK FOR RESPONSES TO INTERROGATORIES. ALL WE ASKED

1 FOR ARE THREE PERCIPIENT WITNESSES THAT WE BELIEVE WE COULD
2 COMPEL IF WE WERE TO BRING THIS IN STATE COURT.

3 AS TO TRAINING, HOWEVER, WHILE TRAINING COULD BE
4 PART OF THE MONELL CLAIM THESE ARE NOT 30 (B) (6)
5 DEPOSITIONS. SO, YOU KNOW, WE WOULDN'T BE ASKING THOSE
6 TYPE OF QUESTIONS.

7 HOWEVER, I CAN SEE POTENTIALLY A WITNESS RESPONDING
8 THAT THE INFORMATION THEY HAVE IS BASED ON TRAINING THEY
9 HAVE RECEIVED. AND, THEREAFTER, I CAN SEE POTENTIALLY
10 BEING CUT OFF IN FINDING OUT WHAT THAT WAS WITHOUT
11 ASKING FOR THE TRAINING DOCUMENTS BECAUSE, OF COURSE, WE
12 DON'T HAVE THAT OPPORTUNITY YET, I UNDERSTAND.

13 THERE HAS TO BE A LITTLE BIT OF, AS YOU LIKE TO
14 SUGGEST, "WIGGLE ROOM" WHERE WE GO WITH THIS SO IT
15 AFFECTS THE SPIRIT OF YOUR ORDER.

16 **THE COURT:** THE SPIRIT OF MY ORDER IS TO MAKE SURE I
17 KNOW WHAT HAPPENED WITH RESPECT TO THIS PARTICULAR PLAINTIFF.

18 **MS. DE VRIES:** THANK YOU.

19 **THE COURT:** THAT IS WHAT I'M CONCERNED ABOUT. THAT
20 IS THE CONCERN. THERE ARE THINGS THAT -- EVERY TIME I PREPARE
21 FOR TRIAL THERE IS A SET OF THINGS THAT I DO. I JUST DO IT.

22 IT'S LIKE PATTERN AND PRACTICE. RIGHT? EVERY TIME
23 YOU PREPARE FOR DEPOSITIONS THERE ARE CERTAIN THINGS
24 THAT YOU DO.

25 SO YOU PROBABLY HAVE DONE A HUNDRED DEPOSITIONS OR

1 MORE. AND THERE ARE ALWAYS THINGS THAT YOU DO. AND YOU
2 MAY NOT -- YOU KNOW, IF I WAS ASKING YOU QUESTIONS ABOUT
3 THE DEPOSITION YOU TOOK LAST WEEK, YOU WOULD REMEMBER
4 MORE SPECIFICALLY.

5 BUT IF I ASKED YOU SOMETHING ABOUT A DEPOSITION YOU
6 TOOK FOUR YEARS AGO, THE ONLY THING YOU ARE GOING TO
7 REMEMBER IS YOUR PATTERN AND PRACTICE. THOSE KIND OF
8 PATTERN AND PRACTICE ISSUES, I'M NOT SO CONCERNED ABOUT
9 THEM, BECAUSE THAT WAS THEIR MODUS OPERANDI. RIGHT?
10 THAT'S HOW THEY ALWAYS DID THINGS. THAT YOU CAN GET
11 LATER.

12 **MS. DE VRIES:** OKAY.

13 **THE COURT:** BUT IF I WANT TO KNOW SOMETHING VERY
14 SPECIFIC ABOUT THE FACTUAL BASIS FOR THIS PARTICULAR CLAIM,
15 THAT'S WHAT I'M CONCERNED ABOUT. THAT'S WHAT I'M CONCERNED WE
16 WILL LOSE IF WE WAIT.

17 **MS. DE VRIES:** I TOTALLY AGREE, YOUR HONOR. AND AS
18 TO PATTERN AND PRACTICE WE HAVE AT LEAST ONE WITNESS WHO IS
19 RETIRED WHO MAY START TO FORGET WHAT HER PATTERN AND PRACTICE
20 WAS. AND THERE'S A VERY SERIOUS CONCERN HERE OF AMNESIA, IN
21 WHICH CASE PATTERN AND PRACTICE WOULD BE RELEVANT.

22 **THE COURT:** WHO HAS AMNESIA?

23 **MS. DE VRIES:** WELL, I DON'T KNOW. I'VE BEEN TRYING
24 TO DEPOSE THESE WITNESSES FOR YEARS, SO I'M NOT SURE YET.

25 **MS. WIDEN:** I'M NOT AWARE OF ANY WITNESS WHO HAS

1 AMNESIA.

2 **MS. DE VRIES:** OKAY. WONDERFUL.

3 **THE COURT:** I MEAN, I DON'T KNOW HOW MUCH MORE
4 GUIDANCE I CAN GIVE YOU.

5 **MR. ENABNIT:** YOUR HONOR, IN VIEW OF YOUR
6 ANTICIPATED RULING, IS THERE ANY SPECIFIC DEADLINE WE HAVE TO
7 COMPLETE THE DEPOSITIONS THAT WE HAVE JUST DISCUSSED?

8 **THE COURT:** WELL, I WOULD LIKE THEM, SAY, HOW ABOUT
9 THE END OF JANUARY? DOES THAT WORK?

10 **MS. WIDEN:** YES, YOUR HONOR.

11 **THE COURT:** AND THEN YOU CAN FILE YOUR MOTION FOR
12 SUMMARY JUDGMENT. IF WE'RE DOING THIS BY THE END OF JANUARY,
13 WHEN CAN YOU GET THAT ON FILE?

14 **MR. ENABNIT:** WELL, IF THE TRANSCRIPTS WILL PROBABLY
15 COME TO ME MAYBE BY THE THIRD WEEK OF FEBRUARY. SO IF -- I
16 THINK MAYBE MARCH 15TH. I'M NOT SURE IF THAT'S A SATURDAY OR
17 SUNDAY, BUT MID-MARCH. I WOULD PROPOSE MARCH 15TH.

18 **THE COURT:** OKAY. SO I'LL PUT YOU ON CALENDAR FOR
19 FILING OF THE SUMMARY JUDGMENT FOR MARCH 15TH. THE
20 OUTSTANDING DEPOSITIONS TO BE TAKEN BY JANUARY 31ST.

21 IN TERMS OF THE SUMMARY JUDGMENT, YOU CAN GO AHEAD
22 AND FILE IT WITHOUT A FURTHER CONFERENCE WITH ME. JUST A
23 REMINDER THAT YOU NEED TO DO A SEPARATE STATEMENT OF
24 FACTS. YOU NEED TO EXCHANGE THAT WITH THE OTHER SIDE.

25 SO THAT THAT -- SO THAT THEY ARE NOT RETYPING

1 EVERYTHING. AND THEN, IT WOULD BE ON A TYPICAL 35 DAYS
2 NOTICE.

3 **MS. WIDEN:** YES, YOUR HONOR.

4 **THE COURT:** BECAUSE IT SHOULD BE RELATIVELY
5 CONFINED. THE TRIAL DATE AND ALL TRIAL-RELATED DATES ARE
6 VACATED. AND AS SOON AS -- AND ALL OTHER DISCOVERY THEN
7 IS -- WELL, THE DEADLINE WILL HAVE PASSED AS OF TODAY. SO THE
8 DEPOSITIONS ARE THE ONLY THING THAT I'VE AUTHORIZED BEYOND THE
9 DISCOVERY CUTOFF.

10 DID YOU HAVE A EXPERT CUTOFF DATE?

11 **MS. DE VRIES:** WE DID.

12 **MR. ENABNIT:** WE DID.

13 **MS. DE VRIES:** JANUARY 18TH.

14 **THE COURT:** AND SO DID YOU WANT TO PROCEED WITH THAT
15 OR DO YOU WANT ME TO VACATE THOSE DEADLINES?

16 **MR. ENABNIT:** WHAT I WOULD PROPOSE, YOUR HONOR, IS
17 THAT YOU VACATE THEM. HOWEVER, TRIAD HAS HAD AN EXPERT
18 EXAMINE -- A PSYCHIATRIST EXAMINE THE PLAINTIFF. AND WE WILL
19 PRODUCE THAT REPORT WHEN IT IS MADE AVAILABLE TO ME,
20 NOTWITHSTANDING ALL OTHER DEADLINES THAT ARE NOT IN EFFECT
21 RELATING TO EXPERT WITNESSES.

22 **THE COURT:** ALL RIGHT. SO ALL THE TRIAL-RELATED
23 DEADLINES ARE VACATED AT THIS POINT.

24 **MS. DE VRIES:** THANK YOU, YOUR HONOR.

25 **MR. KESSLER:** THANK YOU.

1 **THE COURT:** YOU KNOW, IT'S ALL I CAN DO.

2 ALL RIGHT. HAPPY HOLIDAYS. THANK YOU.

3 **MR. ENABNIT:** SAME TO YOU.

4 **MS. DE VRIES:** HAPPY HOLIDAYS, YOUR HONOR.

5 (THEREUPON, THIS HEARING WAS CONCLUDED.)

6 STENOGRAPHY CERTIFICATION

7 "I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
8 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."
9 DECEMBER 23, 2018
 /S/KATHERINE WYATT

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